MINUTES OF THE
CAPITAL PROJECTS AND
BOND OVERSIGHT COMMITTEE

January 24, 1996

The Capital Projects and Bond Oversight Committee met on Wednesday, January 24, 1996, at 1:00 p.m., in Room 125 of the Capitol Annex. Representative Robert Damron, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Robert Damron, Chairman; Senators Charlie Borders, Jeff Green, and Bob Leeper; Representative Tommy Todd.

Guests: Bill Hintze, Allen Holt, Governor's Office for Policy and Management; Secretary John McCarty, Finance and Administration Cabinet; Commissioner Clark Beauchamp, Jim Abbott, Department for Facilities Management; Mary Lassiter, Kim Blitch, Office of Financial Management and Economic Analysis; Camille Bathurst, Kentucky Lottery Corporation; Bob Bender, Hugh Smith, Department of Parks; Cheryl Roberts, Department of Corrections; Margaret Simpson, Auditor of Public Accounts' Office; RM Burnett, Johnston, Brown, Burnett, and Knight, Inc.; Roger Peterman, Peck Shaffer and Williams; George DeBin, Ken Clevidence, Mary Allen, University of Kentucky; Sherron Jackson, Council on Higher Education; LD Adams, Jr.; Tina Hoster; Jack Affeldt, Sharon Cantrell, Karen Hilborn, Doug Teague, LRC.

LRC Staff: Mary Lynn Collins, Pat Ingram, Scott Varland, Esther Robison.

Press: Robert Garrett, Courier Journal; Charles Wolfe, Associated Press.

Senator Green made a motion to approve as submitted the minutes of the December 19, 1995 meeting. The motion was seconded by Senator Borders and approved.

Chairman Damron said 2 Correspondence items were provided:

for a feasibility study for a new dorm at the Green River Correctional Complex (GRCC) in Muhlenberg County. The Committee postponed action on the proposed allocation at its November 28 and December 19 meetings. Mr. Bill Hintze, Governor's Office for Policy and Management (GOPM), noted that the Committee wanted reassurance that the proposal was not being rushed through at the end of one administration when the policy of the next administration might be different. Mr. Hintze said the Jones Administration and the Corrections Department had felt the need was urgent for this new dormitory, but deferred the proposal to seek input from the new administration. He said the new Finance Secretary John McCarty was present, to lend evidence of the Patton Administration's support. Mr. Hintze said that the Governor, in his Executive Budget for 1996-98, will recommend full funding for the proposed dorm at GRCC. He said the dorm is one of a series of projects that will be advocated, and one of a handful of projects that will be supported from bonded indebtedness; it is a project envisioned when the Green River Complex was originally constructed. Apart from those facts, he said, nothing has changed about the proposal - the state will be funding design for the project with an allocation of $336,000 from the capital construction contingency account, and will repay the account when project bonds are authorized and sold, as has been the state's practice and as this Committee has consistently supported in the past. He said the project needs to move forward because there is a considerable backlog of prisoners throughout the system. He said the new Administration plans on using all available options to handle the backlog of prisoners: putting prisoners in jails, halfway houses, existing correctional facilities, and new facilities proposed for construction.

Chairman Damron said he had spoken with Governor Patton the previous day, and had been assured that funding to construct the dorm will be included in the 1996-98 Executive Budget.

Senator Borders asked for a future report on why it costs the state $70,000 per bed to build a prison. He said he thinks of a prison as concrete floors and walls and no amenities, and since prison facilities are likely to be a part of the state budget for several years, he would like to know why it costs so much to incarcerate someone who has committed a crime. Mr. Hintze said that report will be provided; he said the Corrections Department has a detailed breakdown on prisoner cost by institution and by custody level, and information will be provided on what it costs to incarcerate a prisoner and why it costs that amount.

contingency allocation for the feasibility study for the new dorm at GRCC. The motion was seconded by Senator Leeper, and approved by a unanimous voice vote.

The Committee deviated from the agenda and considered next, under New Business, the monthly project report from the Finance and Administration Cabinet. Mr. Hintze said Finance submitted a single project this month - an allocation from the contingency account for a Department of Parks project - Blue Licks State Park - Multipurpose Building Expansion/Lodge. The project was originally authorized by the 1990 General Assembly, and reauthorized in 1992, at $1,500,000 in state bond funds. Mr. Hintze said, with authorization by the State Property and Buildings Commission, the Finance Cabinet established an account receivable of $175,000 for the project, to allow design to move forward prior to the bond sale. He said the state customarily does this so that state bonds are not sold prematurely, thereby incurring IRS penalties. However, when project bids were taken, they exceeded the authorized scope, as well as the 15% overrun permitted by statute. He said the 1994 General Assembly de-authorized the project and the bonded indebtedness authorization was withdrawn, so no authority now exists to construct the facility. He said when a project is de-authorized, the Executive Branch has an obligation to take action in concert with the General Assembly's directive. He said the action customarily taken, and considered to be a legal requirement, is to close the project, liquidate the receivable, and report the project closure to the legislature and the state Auditor of Public Accounts. He said the only means at this time to liquidate a receivable on a capital project is by allocation from the capital construction and equipment purchase contingency account. Mr. Hintze stressed that, at this point, the Executive Branch has no legal authority to keep a receivable on the books in perpetuity, especially in light of legislative action. He said the account will be kept open, pending any action the 1996 General Assembly may take with regard to the project. If the legislature provides new authorization for the project, he said, the project will go forward; and if the 1996 General Assembly keeps the project de-authorized, the project account will be closed.

Chairman Damron asked if the contingency funds would be repaid from the sale of project bonds if the project is re-authorized. Mr. Hintze said that is correct.

Senator Borders made a motion to approve the contingency allocation to settle the receivable for the project. The motion was seconded by Representative Todd and approved by unanimous voice vote.

Ms. Bathurst said the Lottery Corporation is now reporting it has completed purchase of the property for the corporate headquarters, with one slight variation in the transaction. In order to close the transaction within a deadline set by the seller, it was necessary to split the transaction. She said according to the original agreement, the seller (FBN Properties) was to acquire a tract of land measuring 12 feet by 33 feet from an adjacent property owner (SHAPE), and include the small tract in its property sale to the KLC. She said there were difficulties obtaining a recordable minor subdivision plat, and it became necessary to close the property transaction without acquisition of the small tract and conveyance of an easement. She said the main seller gave the Lottery a credit for $4,500 at closing to hold for payment to the owner of the small tract. She said as soon as the minor subdivision plat has been approved and recorded, KLC will convey that money to the owner of the small tract and will grant an easement across the property. She said the KLC wanted to inform the Committee of this change in the transaction as it was contemplated in the agreement the Committee approved.

Senator Green said he wondered if the Committee's approval was specific to KLC acquiring the headquarters property only from the main seller, or if it simply authorized acquisition of the property. Ms. Bathurst said she thought the Committee approved the property acquisition. She said the KLC had thought it would be simpler to have the seller of the small tract of land convey it directly to the KLC, but if that is a problem, she said, the KLC can ask the seller of the main property to acquire the small tract and sell it to the KLC, as originally proposed. She said the KLC will just be having a bifurcated closing by delaying one part of the transaction, but she wanted to advise the Committee and make sure the change was acceptable. In response to questions from Senator Green, Ms. Bathurst said there is an existing contract between the seller of the main tract and the owner of the small tract to acquire the small tract and to grant the easement, and that contract has been assigned to the KLC by the seller of the main tract. Senator Green said the only real hang-up seemed to be the minor plat authorization. Ms. Bathurst said that is correct, and she hoped that would be completed this week.

Representative Todd asked if the KLC has an updated estimate of the cost to renovate the property for use as its headquarters. Ms. Bathurst said she believed the total cost is estimated at about $6.4 million, including land acquisition of $1,700,000. She said the initial budget authorization was $5.2 million, and the KLC has asked for an additional authorization of about $1.4 million.

research laboratories. (Earlier scope increases were approved by the Committee for the project - with federal funds in February 1991, and with agency funds in November 1994 and May 1995, bringing the project's total revised scope to $13,800,100.)

Mr. DeBin said UK is requesting approval for an additional $400,000 scope increase, which is 3.2% of the original (1990) project scope, resulting in a new total project scope of $14,200,100. The increase will be financed from residual agency bond funds, and will be used for duct work and to upgrade fume hoods in the research wing of the Medical Center. Mr. DeBin said the additional work is necessitated by hidden conditions not available to the architect in the design stage of the project. Senator Borders made a motion to approve the agency-funded scope increase for the project. The motion was seconded by Senator Green, and approved by a unanimous voice vote.

Next on the agenda under New Business were several lease reports from the Finance and Administration Cabinet. Mr. Jim Abbott, Director of the Division of Real Properties, said the first report provides a listing of the 24 existing state leases with an annual rental exceeding $200,000. He said this report is provided for the Committee's information and for reference in the 1996 capital budget process. He noted that all of these lease contracts administered by the Finance Cabinet have been reported previously to the Committee in accordance with KRS 56.823.

Mr. Abbott also reported square footage modifications for 8 state leases in the months of October, November, and December 1995.

1. <u>PR-708 - Caldwell County (Human Resources)</u> - An increase of 788 sq. ft., for a total of 2,326, to provide additional space for conference room, visitation/observation room, and another office.

2. <u>PR-1916 - McLean County (Human Resources)</u> - An increase of 545 sq. ft., for a total of 2,934, to alleviate overcrowding.

3. <u>PR-2965 - Bell County (Human Resources)</u> - An increase of 443 sq. ft., for a total of 8,923, to accommodate additional staff and a conference room.

4. <u>PR-3086 - Fayette County (Dept. of Corrections)</u> - An increase of 1,571 sq. ft., for a total of 11,073, to provide 1,000 additional sq. ft. of office space, and to include common areas. Previously Corrections occupied only part of the building, and so did not pay rent for common areas such as hallways, bathrooms and closets. Corrections is occupying 1,000 sq. ft. vacated by another tenant and is now the sole

7. <u>PR-3379 - Pike County (Natural Resources & Environmental Protection Cabinet)</u> - An increase of 4,041 sq. ft., for a total of 11,150, to accommodate 13 additional staff.

8. <u>PR-3799 - Franklin County (Attorney General)</u> - An increase of 2,873 sq. ft., for a total of 46,518, to accommodate additional staff and the relocated Uninsured Employees Branch.

Chairman Damron said lease modifications of less than $50,000 must be reported to the Committee after execution, but no Committee action is required.

Next under New Business was a report from Mr. David Bratcher of the Economic Development Cabinet on a new financing agreement in which the Kentucky Economic Development Finance Authority (KEDFA) is a participant - a Master Financing Agreement between KEDFA, the Crittenden County Hospital Corporation, and General Electric Capital Corporation (GECC). GECC is making a tax-exempt loan of $735,860 to the Hospital for the purchase of medical equipment. The loan is a negotiated transaction closed on December 19, 1995, with terms of 5.68% for 5 years.

Mr. Bratcher said Ms. Collins, the Committee's Staff Administrator, had asked that he be present today to report and explain this transaction, which has just been completed. He said a question has been raised as to whether this financing is a bond issuance as defined by the statutes, and if it is not a bond, whether the financing is required to be reported to the Committee. He said if the Committee wishes such financings to be reported, KEDFA is happy to comply. He said Mr. Roger Peterman of Peck Shaffer and Williams, who was bond counsel on this transaction, was present to answer any questions the Committee might have.

Chairman Damron said he understands that neither KEDFA nor the state is legally liable for this debt, but asked what impact this financing could have on the state's bond rating if Crittenden County Hospital defaulted on the debt. Mr. Bratcher said this specific transaction is for a relatively minor amount and clearly there would not be an impact; but on the broader question, he said, every time KEDFA acts as a conduit for a bond transaction for a community, a memorandum of agreement is entered into wherein everybody agrees to hold KEDFA harmless from any sort of liability. He said the question could be raised whether there is a moral obligation; however, he said his personal perspective is that all participants enter into the transaction with their eyes open, and there is no reason the state should be held responsible. Chairman Damron

Senator Green made a motion to approve the KEDFA financing agreement. The motion was seconded by Senator Borders, and approved by a unanimous voice vote.

Next on the agenda were bond activity reports from the Office of Financial Management and Economic Analysis (OFMEA). Mr. Bratcher of the Economic Development Cabinet reported a new economic development bond (EDB) pool grant project. The project involves a grant of $1,000,000 to Carroll County to assist in funding a new barge facility for North American Stainless (NAS), which manufactures flat rolled chrome nickel stainless steel in Ghent. NAS will fund the balance of the $6,408,796 construction cost. Carroll County will own the barge facility and lease it to NAS for $1.00/year for 20 years, with the option to renew for a similar term.

Mr. Bratcher said North American Stainless, formed in 1989, is a Delaware limited partnership owned by Stainless Steel Invest, Inc. and Stainless Alloys, Inc., both of Hackensack, New Jersey. Both of these companies are owned by Acerinox, S.A. of Spain (95%) and Armco, Inc. (5%).

In November 1990, the Committee approved an EDB grant of $4,000,000 to Carroll County Fiscal Court to acquire a 1,100-acre site for a 400,000 sq. ft. rolling mill facility, to enable NAS to start production. The $222,000,000 project included company equity ($150,000,000) and industrial revenue bonds (IRBs) issued by the Fiscal Court ($68,000,000). The Fiscal Court owns the property and leases it to NAS for $1.00/year; the County will sell the property to the company for a nominal fee when the $68 million IRB is retired. (The ED Cabinet also reported that state funds of $75,000 were provided for an access road, as well as Bluegrass State Skills Corporation training funds of $27,000.) Production began at the facility in 1992 with an annual production capacity of 170,000 tons. The new barge facility will be built on this site.

Mr. Bratcher said when the original EDB incentive was offered to NAS during the Wilkinson Administration, the offer included a provision that if NAS ever elected to construct a barge loading facility, the state would provide an additional EDB grant not to exceed $1,000,000 for up to half of the facility's construction cost. Mr. Bratcher said the company has invested about $70 million in an expansion; it currently employs about 180, and employment is expected to reach 250. He said the company also is planning another expansion.

credits through the Kentucky Industrial Development Act (KIDA) to assist in recovering the cost of an expansion.]

Senator Leeper made a motion to approve the EDB grant for the project. The motion was seconded by Senator Green, and approved by a unanimous voice vote.

Ms. Mary Lassiter of OFMEA reported on several new bond issues. First were School Building Revenue Bonds, Series 1996, with state funding through School Facilities Construction Commission (SFCC) participation in annual debt service payments, for the following school districts:

a. Butler County - with gross proceeds of $2,685,000, to refinance School District bonds issued in 1990. Annual SFCC debt service participation of $148,131 and locally-funded debt service of $114,711. Ms. Lassiter said present value savings to accrue over the term of the bonds are estimated at $127,000, which represents 5.5% of the bonds being refunded.

b. Elizabethtown Independent (in Hardin County) - with gross proceeds of $3,300,000, to fund addition and renovation projects at Morningside Elementary. Annual SFCC debt service participation of $8,978 and locally-funded debt service of $272,253.

c. Harrodsburg Independent (in Mercer County) - with gross proceeds of $945,000, to refinance School District bonds issued in 1989. Annual SFCC debt service participation of $20,129 and locally-funded debt service of $75,725. Ms. Lassiter said present value savings to accrue over the term of the bonds are estimated at $46,535.

Bond Payee Disclosure Forms and additional preliminary information for each proposed new bond issue were provided, and none of the new issues required an increase in local school tax rates. Representative Todd made a motion to approve the 3 SFCC-assisted school bond issues. The motion was seconded by Senator Green and approved by unanimous voice vote.

Also reported was the proposed issuance of School Building Revenue and Refunding Bonds, Series 1996, with 100% locally-funded debt service and no SFCC debt service participation, for:

a. Campbellsville Independent (in Taylor County) - with gross proceeds of payee information must be provided for locally-supported school bonds prior to their issuance, but Committee action is not required.

OFMEA also provided a follow-up report (approval letter) on a previously approved bond issue - Kentucky Housing Corporation Housing Revenue Bonds, 1995 Series E, H, and I, approved by the Committee in October 1995. Series E with proceeds of $7,000,000 is a remarketing issue with earned interest subject to the alternative minimum tax (AMT); Series H with proceeds of $1,560,000 is a replacement refunding non-AMT issue; and Series I with proceeds of $30,490,000 is a replacement refunding AMT issue. The Series E bonds sold on December 20, 1995 at 6.61% with final maturity on July 1, 2026; the Series H and I bonds sold on December 19, 1995 at 6.84% with final maturity on July 1, 2027. Ms. Lassiter said these 3 bond issues, sold by negotiation with ratings of "Aaa" and "AAA," will provide approximately $38,674,000 for the purchase of mortgages for first time low-to-moderate income homebuyers. Bond proceeds will be blended to yield an initial mortgage rate of 6.65%.

Chairman Damron said next on the agenda were letters of Certification by the Finance Secretary and the Executive Director of OFMEA reporting compliance with KRS 45A.877 in the selection of underwriters' counsel for a number of state bond issues. House Bill 299, enacted by the 1994 General Assembly and codified in part as KRS 45A.877(3), requires that the Secretary of the Finance and Administration Cabinet and the Executive Director of OFMEA certify to the Capital Projects and Bond Oversight Committee, that in the selection of underwriters' counsel for new state bond issues, "neither they, or, to the best of their knowledge, anyone involved in the selection process, attempted to recommend the hiring of any law firm by an underwriter." Certifications were provided for the following bond issues: Kentucky Housing Corporation Housing Revenue Bonds, 1995 Series E, F, G H, and I; State Property and Buildings Commission Revenue and Revenue Refunding Bonds, Project No. 59; Kentucky Infrastructure Authority (KIA) Wastewater Revolving Fund Program Revenue Bonds, 1995 Series D; KIA Solid Waste Revolving Fund Program Revenue Bonds, 1995 Series C and D; and Kentucky Higher Education Student Loan Corporation Insured Student Loan Revenue Bonds, 1995 Series A, B, and C. The Committee has approved all of these bond issues, and, after today's meeting, will have received follow-up reports on all of the issues. Chairman Damron said no action by the Committee is required with regard to the certifications.

OFMEA also provided for the Committee's information monthly and weekly debt selection is made that all applicable procedural provisions of KRS 45A.840 to KRS 45A.879 were met in the selection process. Certification was provided by Ms. Margaret Simpson of the Auditor's Office that all provisions were met in the selection of bond counsel and/or underwriter for the following bond issues or bond-issuing entities: bond counsel and underwriter for the Kentucky Infrastructure Authority; bond counsel and underwriter for the State Property and Buildings Commission's Project No. 57 bonds; co-managing underwriters for bond-issuing state agencies for FY 1996; and bond counsel and underwriter for the Kentucky Housing Corporation for FY 1996. No action further by the Committee is required.

Under Other Business, Senator Green provided for the Committee's information a report on Senate Bill 92, which he is sponsoring to address Committee concerns regarding large equipment purchases by the Kentucky Lottery Corporation (KLC) not authorized by the General Assembly. The bill deletes the provision in KRS 154A.060 exempting lottery equipment purchases from executive budget requirements; requires the KLC to include capital projects in its budget unit request submitted to the Finance and Administration Cabinet; permits inclusion in the budget request of a "contingency" item to cover emergency situations should the KLC need to purchase leased equipment from vendors no longer able to fulfill contractual obligations; and allows the KLC to submit general budget requests for equipment with a maximum spending amount, providing the KLC some flexibility if it is unable to identify specific systems or items of equipment to be purchased at the time budget requests are made. (Current statutory provisions that require review by the Capital Projects and Bond Oversight Committee prior to the Lottery's purchase of property or equipment are not affected by Senate Bill 92.)

Senator Green reported that Senate Bill 92 passed the Senate with no problem, and he thanked the staff of the Lottery Corporation for their assistance with the bill. Chairman Damron said he looked forward to seeing the bill in the House, and he and other Committee members will work in support of the bill when it reaches the House.

Also under Other Business, Committee staff provided a report on the historic use of the capital construction and equipment purchase contingency account and the emergency repair, maintenance and replacement account, as requested by the Committee at its December 19 meeting. Ms. Mary Lynn Collins, Staff Administrator, said these 2 accounts were created by the same act that created the Committee in the 1979 Special Session. She said she attempted to track the accounts' activity back to in FY 1986, the net drain was probably because an appropriation was never allocated to the account. In FY 1995, part of the net drain was $1.5 million allocated for fire damage repairs at Murray State University, although some portion of that amount may be recovered from insurance proceeds. Also, she said, while the General Assembly authorized $2 million for the account for the 1994-96 biennium, it also appropriated over $1 million of that amount for a specific project - the Central State Hospital Recovery project. She said FY 1995 was a record year for the emergency account, with over $4.9 million allocated from the account. She said the current balance in the account is $10.3 million, which on the surface looks like a healthy reserve; however, she said, it looks as though there will also be a net drain on the account for FY 1996, and if that continues at current appropriation levels, the reserve will quickly be depleted.

Ms. Collins then referred to tables in the report concerning the contingency account. She said FY 1994 and 1995 were some of the lowest years for transfers from the contingency account, but the current year, FY 1996, is one of the highest. She said there is already a net drain on the account this year; the state is only 7 months into the Fiscal Year and has already spent more from the account than in any single year since FY 1985. Part of the reason is that the contingency account can be used for a number of things, including advances to bonded projects and to fund feasibility studies for potential projects, although its major use is for cost overruns or scope increases for authorized capital construction projects. Account funds can also be used as a match for federal or private dollars, she said, and one reason for the drain on the contingency account in the current Fiscal Year is an allocation of over $1 million as the state match for the federally-assisted Kentucky TeleLinking Network (KTLN) project. Ms. Collins said the current contingency account balance, including today's Committee action, is a little under $4 million, and this account again could be quickly depleted if appropriation levels stay the same and spending continues at the same level as in the current Fiscal Year.

Ms. Collins said the Capital Planning Advisory Board made recommendations for replenishment of these 2 accounts. The emergency account was its No. 2 priority with a recommendation for increased funding at $6 million in FY 1997 and $2 million in FY 1998 to replenish the emergency reserve. The Board listed the contingency account as its Priority No. 5, but recommended funding of $2 million for the 1996-98 biennium, which is only slightly above the current level. (The account's authorization in the 1994-96 biennium is $1.8 million.) Ms. Collins said the Finance and Administration Cabinet approved in the budget process. He added that the Committee will continue to closely monitor the funds.

Representative Todd asked if any major drains are expected on the accounts in the remainder of FY 1996. Ms. Collins said it is hard to predict, because the contingency account can be used for so many different things. She noted, as a fund source, there is no dollar limit or cap on allocations to serve as matching funds for up to 50% of unbudgeted projects receiving federal or private funds. Mr. Hintze, Governor's Office for Policy and Management, said he was not aware of very many projects in process for transfers from the accounts. He said there is a small emergency project pending for Hume Hall at Kentucky State University. There is the whole array of Parks Revitalization projects his office is monitoring for which contracts have not yet been awarded, but, he said, those projects will unfold over the next year rather than over the next few months. And, he said, emergencies, often weather or fire-related, cannot be predicted. He assured the Committee that when the Governor makes his Budget Address, both of these accounts will be recommended for funding at record levels. He said these accounts are among the best places to put one-time, non-recurring revenue, for emergencies or contingencies. He said contingencies can be of the pleasant sort where the state gets unanticipated federal or private funds, or the more unpleasant sort where there is a cost overrun or something just needs to be done. He said the Executive Branch hopes this last year was an aberration, and it is going to restore the funds.

Senator Green said, as the budget goes through the process, it will be the job of the Committee members, as legislators, to do what they can to make sure the accounts are maintained at the level recommended by the Governor.

Senator Green referred to a news article in the Committee members' folders concerning a policy change of the Council on Higher Education. Under the new policy, state universities will have to ask the Council for permission before they accept gifts of land or buildings. He said this issue has been before the Committee on numerous occasions and he is glad to see that it is being addressed by the Council.

Senator Green said a special meeting is tentatively scheduled for Wednesday, February 21, to hear from the Attorney General's Office on their investigation into property acquisitions for the Lexington Cultural Center project, including the Ben Snyder block. He said the Committee's regular monthly business meeting would be